IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2725 OF 2007

Shri Revatiraman Ramkisan Pitti
and ors. ..Petitioners

Vs.

Shri Trimbakrao Madhavrao Shirole
and ors. ..Respondents

Mr. Mukund T. Pise for petitioners.

CORAM: B.H. MARLAPALLE, J.

Date : June 22, 2007.

P.C.:

1. Heard the learned counsel for the petitioners who are the defendant nos.2 to 8 in RCS No. 26 of 1997. It appears that an application Exh.139 came to be filed on 26/8/2005 i.e. after eight years of filing of the suit by the present petitioners praying for framing the issue regarding the maintainability of the suit against the defendant nos.2 to 8 and this application was purportedly made solely on the basis of certain admissions of the plaintiff in her cross-examination on or about 9/6/2004. The learned

Judge of the trial court in his order dated 20/9/2005 observed that the issue regarding the maintainability of the suit can be considered even at the time of final hearing based on the evidence of the respective parties and that the application was filed after the evidence of the plaintiff was recorded and even the evidence of defendant no.1 was over. When it was the turn of the defendant nos.2 to 8 to adduce oral evidence, this application at Exh.139 was submitted and impliedly to cause delay in the trial of the suit. The order passed by the trial court was challenged in Civil Revision Application No. 2 of 2006 and the revision came to be dismissed by the learned Ad-hoc District Judge, Pune on 6/1/2007. The revision court noted that in the original Written Statement the issue regarding the maintainability of the suit against defendant nos.2 to 8 was not raised, though such an issue was sought to be raised by filing additional affidavit in November, 2004. The revision court also considered that the application at Exh.139 was apparently filed with an intention to delay the trial of the suit and, therefore, it dismissed the revision application with costs.

2. There is no doubt that the suit has been pending for about 10 years now and the recording of evidence of the plaintiff as well as the defendant no.1 was over in the year 2005 itself. Even otherwise, the issue of maintainability of the suit against defendant nos.2 to 8 has not been closed and it is left wide open for the trial court to decide when the suit is being decided finally. It is for the defendant nos.2 to 8 to place on record oral as well as documentary evidence to support their contentions that they are not the tenants of the plaintiff in respect of the suit land and, therefore, the application filed at a belated stage to frame preliminary issue has been rightly rejected. The order impugned does not call for interference under the supervisory powers under Article 227 of the Constitution.

3. Hence the petition is rejected summarily.

(B.H. Marlapalle,J.)